



22 NOV 2006

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In re Application of	:	DECISION
EBERL et al.	:	
Application No.: 10/551,179	:	
PCT No.: PCT/EP02/04030	:	
Int. Filing Date: 10 April 2002	:	
Priority Date: 22 May 2001	:	
Attorney Docket No.: 101795.56308US	:	
For: METHOD AND SYSTEM FOR	:	
PROVIDING INFORMATION ON THE EYE	:	

This decision is in response to applicants' renewed petition under 37 CFR 1.137(b) filed in the United States Patent and Trademark Office (USPTO) on 20 October 2006.

### **BACKGROUND**

On 10 April 2002, applicants filed international application PCTEP02/04030 which designated the U.S. and claimed a priority date of 22 May 2001. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 28 November 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 24 November 2003 (22 November 2003 being a Saturday).

On 29 September 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee, an assertion of small entity status, and a petition under 37 CFR 1.137(b) to revive the application.

On 30 August 2006, a decision was mailed dismissing applicants' petition under 37 CFR 1.137(b) without prejudice because it was not clear that the statement regarding unintentional abandonment was provided by the relevant party.

On 20 October 2006, applicants submitted the instant renewed petition under 37 CFR 1.137(b) which was accompanied by, *inter alia*, a statement signed by Heinrich Eberl and an English translation thereof which appears to be dated September 2003, a statement signed by Robert Buecher dated September 2003, a statement from Dr. Martin Prager to David Dickerson dated 20 November 2003 and a partial translation thereof, and an assignment in English from

Roland H.C. Eberl to David Dickerson dated 13 June 2005.

### **DISCUSSION**

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicants submitted the basic national fee on 29 September 2005.

As to item (2), applicants submitted the petition fee on 29 September 2005.

Item (3) still has not been satisfied. First, the delay from at least November 20, 2003, when the bankruptcy trustee purportedly transferred the rights to Mr. Dickerson, until the filing of the U.S. Basic National Fee on 29 September 2005 has not been adequately explained. (Paragraph 25 of the renewed petition states that "the U.S. application could have been filed as late as October 10, 2006." However, this statement is incorrect. Because the international application claimed priority to an earlier application filed 22 May 2001, the latest the U.S. application could have been filed was 24 November 2003 (22 November 2003 being a Saturday).) The petition states that the delay was because (1) "the files for the PCT application had been lost during the Physoptics bankruptcy proceedings" and (2) inventor David "Dickerson lacked the necessary resources, it was necessary for him to obtain financing." As to (1), it is clear that Mr. Dickerson had a list of the applications transferred to him at least as of 20 November 2003 (statement from Dr. Martin Prager to David Dickerson dated 20 November 2003). To file a U.S. national stage application in the United States, all that is required is a cover letter and the U.S. Basic National Fee. Even if Mr. Dickerson believed that a copy of the application was due as well, this could have been obtained very easily from the WIPO website. As to (2), the U.S. Basic National Fee in November 2003 was \$900. It is not clear that Mr. Dickerson needed to obtain financing for this amount from at least 20 November 2003 to 29 September 2005. Second, the series of events set forth in the renewed petition must be set forth in a statement by Mr. Dickerson himself, who would have firsthand knowledge of the events described.

### **CONCLUSION**

The petition under 37 CFR 1.137(b) is **DISMISSED**, without prejudice, for the reasons set forth above.

Applicant is hereby given the time limit of **TWO (2) MONTHS** from the mail date of this communication in order to file a proper response.

**Failure to timely file a proper response to this decision in a timely manner will result**

**in abandonment of the application with regards to national stage prosecution in the United States.**

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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